

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-182766

DATE: OCT 9 1975

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MATTER OF: Allen Business Machines Company

DIGEST:

1. Bailee, in the case of a bailment for mutual benefit, is held to a standard of due care and ordinary prudence. While presumption of negligence ordinarily arises from destruction of bailed property, this rule does not apply where property destroyed by fire.
2. Since persons who enter contractual relationships with the government are charged with responsibility of accurately ascertaining the extent of a limited agent's authority, the government is not bound by a damage clause signed by an employee beyond the scope of his authority.
3. When bailed property is destroyed, its availability for use is ended and the bailment is at an end. Rental payments are not authorized beyond the date the subject matter of the bailment was destroyed.

This decision is in response to a submission from a Certifying Officer for the Administrative Office of the United States Courts concerning a claim by Allen Business Machines Company (Allen) for payment of \$325 incident to the destruction of a leased typewriter. The facts are not in dispute. A Purchasing Officer for the Administrative Office issued two purchase orders for the rental of a single typewriter, each purchase order specifying a rental term of approximately three months. The first purchase order was executed on September 26, 1973 and covered a period through December 10, 1973. The Purchasing Officer authorized an Administrative Office employee to receive the machine from Allen and to use the typewriter at her apartment in connection with a Government training course. The employee, in addition to acknowledging receipt of the typewriter, signed an agreement with Allen which purportedly obligated the Government to pay \$325 if the machine was not returned on the due date (December 10, 1973). The agreement expressly made this \$325 damage clause applicable if fire should destroy the typewriter. The purchase order, however, specified only the basic rental rate (\$75) and the rental term. Allen has received the rent for this period. On December 10, 1973, the Purchasing Officer issued a second purchase order with a view toward extending the rental term an additional three months. Allen extended the rental term and fixed the expiration date in accordance with the terms of the second purchase order (March 4, 1974). It appears that neither

the employee nor Allen specifically renewed the damage clause which allegedly bound the Government in the first rental transaction. A fire at the employee's apartment subsequently destroyed the typewriter on December 13, 1974. Allen filed a claim for \$325, although it is unclear whether the \$325 claim is submitted pursuant to the damage clause or, alternatively, whether it represents the replacement cost of the destroyed typewriter.

While the precise terms of the rental contract remain for discussion, the rental of the typewriter is to be regarded as a bailment for mutual benefit. B-171084, December 15, 1970. The Government, as a bailee in a bailment for mutual benefit, is required to exercise ordinary care to protect the bailed property in its possession. Clark v. United States, 95 U.S. 539, 542 (1877). In the case of a bailment for mutual benefit, the destruction of bailed property would ordinarily establish a presumption that the Government as bailee was negligent. See Alliance Assurance Co. v. United States, 252 F.2d 529 (2d Cir. 1958). However, the weight of authority appears to support the rule that no presumption or inference of a bailee's negligence arises as a matter of law from the mere fact that the property, while in the bailee's possession, was destroyed by fire. 8 Am. Jur. 2d, Bailments, § 315 at 1202 - 1203 (1963). The record before us in this case contains no indication of negligence on the part of the employee concerning the fire which destroyed the typewriter. On the contrary, the fire apparently originated in electrical wiring. Thus, absent any contractual provision increasing the Government's liability beyond its duty of ordinary care as a bailee, the instant claim may not be paid. See 23 Comp. Gen. 907, 908 (1944).

The purchase orders here contain no provisions which would alter the above conclusion. The using employee, in initially acknowledging receipt of the typewriter, did sign an agreement which attempted to allocate the risk of loss. However, aside from the fact that no loss allocation provision was signed in connection with the second rental transaction which was in force at the time the loss occurred, the using employee was an agent of limited authority and was not authorized to modify the terms of a purchase order, to contract, or to modify a contract on the behalf of the Government. Persons who enter contractual relationships with the Government are charged with the responsibility of accurately ascertaining the extent of the agent's authority. See, e.g., B-180083, January 7, 1974, and cases cited therein. Since the employee lacked actual authority to contractually bind the Government, the damage or loss allocation clause must fail insofar as it purports to bind the Government. It is recognized that an unauthorized act by a limited or special agent may be expressly

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ratified by appropriate officials or ratified through a retention of benefits with full knowledge of the circumstances. However, neither form of ratification is demonstrated under the facts of this case. Accordingly, Allen's claim for damages is denied.

Additionally, the Government's obligation for rent under the second purchase order depends upon the availability of the property for use. When the typewriter was destroyed, its availability to the bailee ended and the bailment terminated. See New L.E. & W.R. Co. v. New Jersey Electric Ry. Co. 38 A 828, 830 (1897). Therefore, the Government's liability for rent may not extend beyond the date of the typewriter's destruction.

Thomas D. Morris

Acting Comptroller General
of the United States